

Cross Border conference on Violence Against Women, October 05

The following is the keynote speech of District Judge Marilyn Mornington from the October conference organised by Newry Women's Aid, Dundalk Women's Aid and Rape Crisis NE.

DISTRICT JUDGE MARILYN MORNINGTON
October 2005

Mark Wynn from the USA Justice Dept describes Domestic Violence (DV) as "Domestic Terrorism" – which destroys the internal structure of society and its citizens as assiduously as other forms of terrorism. Its defeat requires similar determination. We must be trained, committed and vigilant. Structured information sharing on these enemies, between professionals, is essential. Like any army we are only as strong as our weakest link and this battle will be long and hard but the rewards in saving the lives of so many victims and their children make it inescapable.

Despite all the advances made in DV awareness and practices our ultimate failure to date is the fact that the death rate for victims has not reduced at all. One woman in the UK continues to be murdered in a DV situation every 3 days. One in 4 women suffers DV during their lifetime and according to the UN up to 50 % worldwide. DV accounts for 25% of all reported violent crime and it is accepted that the reports are the tip of the iceberg. DV is the biggest indicator of child abuse- approximately 70% of children referred to or within the care system have a background of DV. 25% of women who visit A and E departments are doing so because of DV. It is the major cause of homelessness and children running away from home. The statistics are consistent and overwhelming.

The UK Home Office figures for 2001 in respect of child murders show a total of 143 children and teenagers killed a rise of more than 40% in 12 months. We are now thought to have the highest rate in Europe. There were 65 children under 7 who were killed - a rise of 50 % in 12 months. Most occurred in domestic situations.

An article in the Irish "Sunday Independent" of 18/11/01 called "The Killing of the Innocents" reports that 20 children had met with non-accidental deaths in the Republic in 20 months – most at the hands of their parents. A death toll almost as high as the Omagh bombing – but these deaths are largely forgotten because we do not want to face up to the awful reality of this form of child abuse.

Often their mothers had been killed alongside them. There is a significant rise in the number of men who kill their children, their partners and them themselves-not because they are ill but as the ultimate act of power and control and revenge. Our most infamous recent case of this is that of the Kent Police Officer Carl Bluestone who hammered to death his wife and 2 of his 4 children. The new, Association of Chief Police Officers lead on DV, Assistant Chief Constable Jim Gamble, has developed UK wide policies on Police Officers who are DV offenders. HMIC has this year carried out a comprehensive national review of the Police response to DV. As a civil and family judge I work alongside him on the ACPO Steering Committee and leading a subgroup linking the civil and criminal jurisdiction. We are currently developing a national protocol for the exchange of information between the civil and criminal justice systems based on the work of HHJ Iain Hamilton, Angela Nield and their team in Manchester. In conjunction with the DCA and the Home Office it is being piloted throughout the NW and London from December 2004 and is now being evaluated before going nationwide.

The UK Police are presently in the process of developing a systematic way of investigating the causes and circumstances of domestic violence murders with independent review teams working in an interagency approach.

One hears little of the devastation caused to children when their mothers are killed by their fathers and to the families generally. How does a mother ever recover when she has allowed her child to go on contact to a man she knew as violent to have the child murdered by him? I

personally know one such mother and could not begin to describe her ongoing daily agony 7 years on and her fears that he may be released.

I turn briefly to research carried out by Professor Betsy Stanko's team into DV in Met Area in 2001– just wish to refer to a group of the statistics with particular relevance to the law and health. Out of the 100,000 reported cases of DV per year in the Metropolitan Area-

More than 1 in 8 cases recorded issues around child contact.

More than 1 in 20 incidents involved a victim who was pregnant; in several cases the victim had recently given birth

In more than 1 in 15 incidents the perpetrator made use of an object or a weapon to threaten and/or hurt the victim:

The types of injuries sustained included bite marks, bruising, a broken foot, chunk of hair, cuts, split lip, puncture wound, slash wound, stab wound, and swollen pelvis.

It must be remembered that 90% of this will occur in front of or in hearing distance of the children. In 1 in 4 of the sexual assaults children witnessed the attack. In 3 in 4 cases of domestic sexual assault there was a history of dv. In 3 in 5 a previous report to police.

Dobash and Dobash in an article in the British Journal of Criminology vol.44, number 3, May 2004 report findings of their recent research which concludes that intimate partner violence is primarily men upon women and that women's' violence does not equate to men's' in terms of frequency, severity, consequences and the victims' sense of safety and well being.

So what has been the approach of the law in the UK in the past and now to DV and how can we work together to effect long term change.

"The whole area of family violence has long been a troublesome one for the courts. Frankly, we have not handled these cases well. There is in recent years a heightened public awareness of this issue and the severe physical and emotional damage done to families caught up in the generational cycle of violence. Yet, the response of the criminal justice system, the juvenile courts and the family courts and the service delivery system has not kept pace.

... Surely we still have much to learn.... Most important of all, we must ensure that our children do not continue to suffer the emotional abuse that comes from growing up in a violent home"

Honourable Stephen B Herrell Chairman US Family Justice Committee 1990.

What held true in the USA in 1990 does so for the UK today.

I turn specifically to recent developments and the extent to which DV pervades the justice system. I am concentrating on the law but similar developments are taking place in all public services and on a multi agency basis-

Residence and contact cases -

Until recently many considered that our Family Courts did not deal effectively with the issues involved in child contact and residence where domestic violence was raised and that the problem was largely swept under the carpet and our courts failed to protect mothers and their children from ongoing abuse perpetrated through contact.

Recently reflecting on her years of experience in the Family Division, Lady Hale states in *The View From Court 45*"([1999] CFLQ 377):

Most of my time was spent in oppressing women: specifically, mothers...The most troubling aspect of my perception is that some women are being pursued and oppressed by controlling or vengeful men with the full support of the system"(page 385).

A sea change began about 5 years ago led from decisions of the High Court and, in particular from Mr. Justice Nicholas Wall. Due to mounting disquiet the Family Law Advisory Board put out a consultation paper on contact between children and violent parents which resulted in a much acclaimed report with recommendations for change to the Lord Chancellor.

This has been followed by a further consultation paper investigating the issues of enforcement of contact and the inadequacies of our present system in dealing with this problem. Reference is made to the need, at an early stage, for the courts to refer families to other professionals who can more effectively enquire into and heal the rifts than can the adversarial court process. Further, in many cases a more in-depth examination of the issues than has hitherto been the case may lead the court to conclude that contact is not in the child's interests and nowhere more so than in cases of domestic violence.

On 19th June 2000, the President of the Family Division Dame Elizabeth Butler-Sloss, together with Lord Justice Thorpe and Lord Justice Waller gave judgement in 4 such cases (Re L (contact domestic violence) [2001] 4 ALLER 609). In this revolutionary decision the court, for the first time ever in English law, instructed leading psychiatrists to advise them on the effects of domestic violence on children and in which circumstances contact would continue to be in the child's best interests and with what protective mechanisms in place. The masterly judgement warrants careful reading. The court stressed the need for investigation of allegations; findings of fact; the effects of the violence on the children and their carer; the past and present conduct of both parties; the motivation of the parent seeking contact; the ability of the offending parent to recognise the wrong he has done and be aware of the need to change; that there was no presumption against contact simply because domestic violence was alleged or proved.

We have determined leadership from the very top. It is now all our duty as judges in hearing these cases, or lawyers or other professions contributing to them, to have carefully studied Re L and the guidelines and to apply them. It must not be forgotten that a background of DV may be affecting other aspects of family cases such as the ancillary relief application.

In the recently passed 2002 Adoption Act the Children Act 1989 was amended to give specific statutory direction on dv in children cases to include consideration being given by the courts of the damage caused by children witnessing or hearing violence. This is followed up with new practice rules and section 8 forms to guide judges and practitioners and to screen all cases for DV. Both these reforms came into force in January 2005.

We are already victims of our own success. Courts require more hearing time for findings of fact etc. CAFCASS in Manchester report that 60 % of their case load now involves dv. More experts are required to assess families and undertake therapeutic work. The excellent Freedom Programme in the NW to which Family courts can refer perpetrators is full to capacity. The Police cannot cope with the requests from the courts for background information. This will inevitably increase when the new Section 8 forms screen all cases for DV. We must constantly press for increased resources.

However, in the civil and family law courts we have none of the provisions for the protection of vulnerable and intimidated witnesses that are now available in the criminal courts. An assault took place outside my own chambers last year. When the Police arrived they said that despite the overwhelming evidence of independent witnesses, including court staff, they could make no arrest as it was "only" a Common Assault- will that women feel safe to come to court again?

In Birkenhead Court we are making provision to set aside a conference room so that victims of dv who feel vulnerable can await their hearing in a safe and non-threatening place. You can request that your local court make similar arrangements. The DCA is currently working on a proposal to afford protective provisions in all family and civil courts.

In October 2005 HMICA produced a report of their thematic inspection of the handling of domestic violence issues by CAFCASS and the administration of the family courts in HMCS. I have had a copy put in your delegate packs, It is a very damning report with strong recommendations for change. I leave it to you to decide how much would apply also in Northern Ireland.

Juvenile crime –

Many offenders will come from homes ridded asunder by DV and have been damaged by it. They suffer from - low self-esteem – negative images of themselves. They may be hostile to the society that failed to protect them, acting out violence on others as learnt behaviour or having felt so powerless as a victim, or observer of DV get some of the power back by inflicting violence on others. They are damaged by their mother's inability to parent them due to posttraumatic Stress Syndrome, depression, alcoholism, and drug addiction caused by DV. Dr. Sue Bailey, consultant forensic psychiatrist, Prestwich Hospital Manchester, and an expert

in the Bulger case, is one of a growing band of specialists particularly concerned by the number of young men she sees who are already perpetrating DV on their Girlfriends and their families. Doctor Eileen Vizard, another specialist from Bulger case, heads a unit in London treating dangerous young people referred from throughout the UK. The cost per young person, when last I heard, is £25000 per patient and sadly many are beyond even her expert help. The age of referrals has in 3 years gone down from 15 to 10 – without exception the young people have suffered multiple abuses including DV. In the UK minors commit one third all sexual assaults. Whilst 30 % of imprisoned sex abusers suffered sex abuses themselves, as children 90 % are victims of DV. On the Wirral, where I work, a group run by the Education Department – TULIP (recently shown on BBC) has been set up for mothers and other family members who are being abused by children who have witnessed DV – It was like opening Pandora's Box. Merseyside Police appointed the first police officer in the UK who specialises in children who are abusing their parents- DC Dave Johnson – I can put those who wish in touch with him and obtain the startling report on his work. Similar work is progressing at Manchester University Dept. of psychology under Anne Rushton. Many of the children are truants, which leads us on to -

Children who don't go to school

– These are the children who are kept awake all night hearing or listening in fear of fighting. Their mothers are so damaged emotionally and physically that they are unable to get them to school. The children are often staying at home to protect mother or due to fear of mother being dead when they return. Many children suffer constant changes of school due to being rehoused. 1 family I dealt with had had 7 changes of address. Their mother had never returned to the perpetrator but he was relentless in his long-term campaign of terror against her, which all the services including a prison sentence seemed powerless to stop. – 3 of the 4 boys are presently excluded from school. A dedicated CAF/CASS officer and I had to fight their local education authority to get them referred to a child psychologist.

Even at school the children are likely to be lethargic, and may act out their anger at what is happening at home against teachers and other children leading to their exclusion.

Mothers who are offenders

This may be due, in whole or in part, to lack of self-esteem, stealing because of the financial abuse of perpetrators, become prostitutes, alcoholics, drug offenders, violent themselves. The connection between female offenders and domestic violence has been recognised by the Probation Service. (www.criminaljusticeassociates.co.uk; www.fawcettsociety.org.uk)

Convicting and sentencing the offenders and granting them bail.

At every conference or meeting I attend there are complaints from the other governmental and non governmental bodies led by the Police that, even taking into account the restrictions on sentencing occasioned by the sentencing guidelines, the Judiciary and in particular the magistrates, are failing to take into account the seriousness of domestic violence and to minimise it.

I don't sit in the criminal jurisdiction and therefore cannot personally comment on this but the vice chair of NCDVG HHJ I Hamilton states”

“Bail applications in cases in cases involving domestic violence can give rise to difficult considerations. Frequently, a defendant charged with serious offences arising from domestic circumstances will not have previous convictions and will be presented as a man of good character, in work and of standing within the community. The circumstances of the allegations made are likely to be minimised. Suggestions are made that the complainant has exaggerated or lied because the relationship between them has gone sour. Emotional appeals are made by reference to the fact of the defendant being separated from his children if bail is refused or onerous or unnecessary conditions applied.

Such submissions can be difficult to resist especially if the defendant is of good character. However, research tells us that generally before any complaint is made to the police the victim has endured many past incidents of domestic violence. If there is a past history whether it has led to a complaint or not that information should be brought to the court's attention so that the alleged offence can be seen in its proper context and a properly informed decision made on whether to grant or withhold bail”

Recently, I heard a DV contact case where the perpetrator had 3 times been found guilty of breach of bail. His bail was still not revoked. He was doing everything he could to get to his victim - to persuade or intimidate her into dropping the serious charges against him –with the seeming connivance of the system. It was a miracle she found the strength to continue. Even after his conviction he continues to deny the DV and put her through another 2 days of court proceedings. We should not be surprised that women retract their statements rather amazed that so many are able to go on.

At the commencement of the case I was given a list of 8 drugs she had been prescribed as a direct result of the DV she suffered – on no occasion had her GP referred her to any other agencies or offered counselling. They included anti depressants, alcohol abuse drugs, sleeping tablets. The children were being treated for bedwetting and she had had several visits to Accident and Emergency. She did report to her GP and nothing was done except the prescribing of drugs. I don't accept that GPs and other health professionals are too busy to adequately deal with these women. They are too busy not to and thereby avoid repeat visits and human misery. They need to know what local and national services are available for referral – they can only do so by joining the multi agency partnerships, which in my experience they avoid.

What holds good for bail equally applies to eventual sentence.

It must always be remembered that domestic violence cases are not just those of assault. I recently made a trawl of the Criminal law textbook "Archbold" to compile a list of offences of DV. It runs to 51 and includes, rape, buggery, incest, criminal damage, threats to kill, aggravated burglary, attempted murder, blackmail, kidnapping, etc

The JSB have just launched a national training package for magistrates in respect of dv. There will be 42 trainers to deliver it. This should have a major impact in the future on the way such cases are handled.

The Domestic Violence Crime and Victims Bill has now become law. It will be brought into force over the next 12 months. Amongst the provisions are a register of civil orders, anonymity for victims, DV Murder reviews, breach of a civil injunction to be a criminal offence, common assault to become an arrestable offence, extension of injunctions to single sex partnerships, a Commissioner for Victims and Witnesses. Non statutory reforms include a review of sentencing guidelines and the defences of provocation, self defence etc, and magistrates granting bail to refer all contact issues to the family courts, extension of training in the professions. A national advocacy service for victims –to steer and support them through the court system and be a one-stop shop –is being actively considered. Specialist and Integrated courts such as at Cardiff and Croydon are to be further piloted in other areas. The PM has in a letter to John Denham then HO Minister made it clear that DV is at the top of his home agenda. This is not a party political issue. In NI this is an issue that brings together the communities.

The UK Government Cross-departmental Ministerial Group on DV has just commenced its task of co-ordinating and improving our national response and spreading the best practice throughout the country. The issue has come of age.

Our consensual beliefs are converging towards a response, which acknowledges the criminal nature of family violence along with the special circumstances in which it occurs. The compelling tragedy of family violence has required the state to become more actively and intrusively involved in family affairs. Rather than simply provide protection to the victim and guidance to the perpetrator the courts have found the need to hold the abuser more accountable and thereby attempting to insure that the violence will cease. The shift has been from a private family matter to a criminal public matter. The then Director of Public Prosecutions, Sir David Calvert-Smith, at the launch of the new Crown Prosecution Service Policy on DV on 28/11/01 at the House of Commons cleverly described the evolution in the approach of the criminal courts to DV. Pre 1970s other than in exceptional circumstances – not crime at all. 1970-80s – crime but far less serious than in non-domestic setting 1990 – 2000 crime to be treated on par with non dv. In 2001- CPS official policy to make it an aggravating feature in any offence. The Solicitor General Harriet Harman QC (who initiated the DV Bill) refers cases to the Court of Appeal where the CPS considers the sentence has been too lenient. The defences of provocation and self-defence are currently under review. The Law Commission published its findings of the Review of Partial Defences to Murder (www.Lawcom.gov.uk/files/cp173-prov.pdf)

The English Law Society has published a new family law protocol with lengthy excellent advice on DV. They are initiating training programmes and guidance for Solicitors including on the issue of Forced Marriage. All English and Welsh civil and family judges now trained as part of national Judicial Studies Board programme on DV at induction and continuation – one hopes this will soon extend to all criminal judges.

In 2002 child protection and the protection of vulnerable adults has been added to the compulsory curriculum of every medical school in the UK. It is my firm belief that future progress is dependent on first-rate training for all professions both as students and in ongoing professional training.

The Scottish Executive has launched a national training strategy, which can be obtained from Jillian Gilchrist and is, I believe, the blue print for all our jurisdictions. (www.scotland.gov.uk/library5/justice/dants.pdf). Scotland has allocated £6million over 2 years to assist children who have suffered from Dv. There are 2 full time paid children workers attached to each Refuge. They have made all children who have experienced dv come under the definition of “ Children in need”. They have a national training coordinator and have made children affected by dv a national government priority- they put us all to shame.

ACPO has 7 Working Groups seeking to develop best practice for the Police throughout the UK in relation to DV. They have launched the national best practice and training programme.

The Lord Chancellor set up an Advisory Group specifically to address DV and the Justice system. I felt rather emotional at the first meeting, thinking how far we had come from the small groups of women, often reviled as unstable, dangerous feminists, who some 20 years ago struggled to, open refuges in old houses. Now the issue was at the top of our Government's agenda.

In the UK and the Commonwealth and on International bodies that I sit there has recently arisen a new duty to put in place systems to protect a group of victims of DV who have particular vulnerability and lack of access to public funds and other resources namely, asylum seekers. The Home Office has funded Southall Black Sisters to develop information leaflets for asylum seekers and similar excellent work is progressing in Scotland. The Governments of Wales and the Channel Islands have developed information leaflets for immigrants and asylum seekers as has the Refugee Council.

The Intergovernmental "Raising the Standards" group between England, Eire, Wales, Northern Ireland and Scotland, aims to improve the response to DV across our boundaries by sharing and improving best practice. We have recently agreed a joint definition of DV, which we hope will be adopted internally within our jurisdictions so we are all singing from the same hymn sheet. We are sharing information on inter alia advances in antenatal screening and packs for school children. We are holding our next International conference as guests of Northern Ireland in Belfast in February 2006.

Many EU and UN initiatives are in progress. So much is being done from the small local group to the International body. We all have our part to play.

“Sharing Personal and Sensitive Data in Domestic Violence Contexts: A Tool for Practitioners has been launched by the Home Office. It is aimed at practitioners who work with perpetrators and survivors. A series of step-by-step instructions are given accompanied by an interactive web tool. (www.crimereduction.gov.uk/isp01.htm)

In 2002 NCDVG also commenced an initiative “What are the particular challenges to tackling domestic violence in Asian communities?” This is as a joint venture between NCDVG, LCD, Children Law UK, Home Office, Foreign Office, Scottish Executive, Law Society, and Met. Police, West Yorkshire, Lancashire, South Wales Police forces and Glaxo Smith Kline. They have already been held to sell out audiences in Blackburn, Bradford and London and Cardiff, Manchester, Derby. As a direct result of the initiative NCDVG in partnership with REFUGE and PSU has set up an umbrella group for Asian women's organisations to offer training, support, information etc. There are now 400 members from all over the UK .We particularly wish to be put in touch with any person or group in Northern Ireland who would wish to join.

To do our job properly as judges we need help. Firstly, we need medical professionals to develop a unified system of accurate recording of DV on case files. This information may be utilised by the civil, criminal or family courts immediately or it may be many years later, when the victim has been able to leave her violent situation, that this information will be called on to support her evidence in a contact or residence proceedings or as part of her victim statement upon which sentence will be based. UK police officers often now equipped Polaroid cameras to record the injuries and the crime scene. And I recommend that all professionals who come into contact with victims have similar equipment.

The Youth and Criminal Evidence Act came into force in July 2002– Under its provisions; victims of DV can be treated as intimidated witnesses and give their evidence by video or other non-intimidating means. This is an enormous advance. However, many, if not most, magistrates' courts do not have the means by way of video link, screens, training etc to offer the protection of the Act. Victim Support, picks up most if not all of those requiring special measures at the pre trial visit to the Crown Court –which is far too late in the process. I suggest that a simple tick box is added to arrest forms so that the arresting officers identify those who may require special measures right from the commencement of a case and that thereafter such cases are passed on to trained police officers and /or CPS prosecutors for evaluation. Is the reality that if we properly screened the system could not possibly cope with the number requiring help and if so what is the solution? The Metropolitan Police are piloting such a screening programme at the moment (together with protocols and training for all ranks of officers) under Operation Athena.

Many though not all, victims of domestic violence will come under the category of “intimidated witnesses”. Accompanying the physical violence there will always have been a long term sustained campaign of emotional violence and control. The victim is likely to have been isolated from her friends; family and other support mechanisms, intimidated, browbeaten- her confidence and even her physical and mental health destroyed. Many women who have eventually found the courage to commence a prosecution are abused again by the system that fails to protect and support them through the process. Bail is granted when it should not be or without sufficient protective conditions in place. When it is breached again and again nothing is done. Defence lawyers deliberately seek and obtain adjournments hoping the endless delays will break her spirit. We should not be surprised that so many women retract but amazed at those who find it within themselves to continue. When proper support and protective measures are put in place, such as on the Wirral, the conviction rate soars.

Although DV equally afflicts all sections of society some victims are of particular vulnerability and face particular challenges in leaving their abuser and in going through the court process. For these victims in particular understanding and protective measures are even more crucial. They include-

- Those from ethnic Communities
- Those with language difficulties
- Asylum seekers
- Older women
- Women from strict religious sects
- Prostitutes
- Drug Addicts
- Alcoholics
- Those brought up in care
- Those with physical and mental impairments
- Those with young or disabled children
- Men

If perpetrators are to be brought to justice and victims and their children given the protection they deserve we must develop a justice system for both the civil and criminal courts where each victim is assessed at an early stage by a trained professional as to the particular support structures she requires to protect her through the process and that such measures be in place and available to all regardless of which court or part of the country the case is being heard in. Such a system works very effectively in New York and is being piloted in the new Croydon specialist dv court, which I encourage you to visit and /or contact.

A more complete understanding of the dynamics of family violence forces us to appreciate the reciprocity between the legal and non-legal aspects of the cases. The ability of the justice system to respond to the non-legal factors will enhance its ability to effectively deal with the legal matters.

How we choose as individuals and as a society to tackle DV and our commitment to its eradication will, I believe, be a major test of the type of country and world we want to live in in the 21st Century.

If only each of us could make it better for one family imagine how much human misery could be alleviated, but we can do so much more. We have a massive task ahead of us – but so did those who sought to abolish slavery and to bring down apartheid. There can be no going back and it is a privilege to have the chance to take part in the process and to effect change.

The solution lies in every individual and agency responding and co-operating and constantly developing as our knowledge increases. Family violence has been around for a long long time. Our efforts to put an end to it are embryonic. Yet, they are already making a difference. Ultimately, the answer lies in shaping a society, which chooses to be non-violent, just and free of oppression. As the Metropolitan Police "Project Adhikar" had as its motto "Enough is Enough".

Marilyn Mornington October 2005

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www.ncdvg.com

The following documents can be found at www.dhsspsni.gov.uk

1: Tackling Violence at Home; A strategy for addressing DV and abuse in NI.

2: Tackling Violence at Home; Action plan number 1.

Useful Links:

1. REPORT: http://www.hmica.gov.uk/files/HMICA_Domestic_violence_linked1.pdf
2. HMCS RESPONSE: http://www.hmcourts-service.gov.uk/cms/files/hmica_action_plan_overall_response_1005.pdf
3. CAFCASS RESPONSE: <http://www.cafcass.gov.uk/English/Publications/reports/05Oct11CAFCASSActionPlanSummary>